

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. AH SING, DEFENDANT AND APPELLANT.

G.R. No. 13005. October 10, 1917

Ponente: MALCOLM, J.

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MALCOLM, J.:

This is an appeal from a judgment of the Court of First Instance of Cebu finding the defendant guilty of a violation of section 4 of Act No. 2381 (the Opium Law), and sentencing him to two years imprisonment, to pay a fine of P300 or to suffer subsidiary imprisonment in case of insolvency, and to pay the costs.

The following facts are fully proven: The defendant is a subject of China employed as a fireman on the steamship Shun Chang. The Shun Chang is a foreign steamer which arrived at the port of Cebu on April 25, 1917, after a voyage direct from the port of Saigon. The defendant bought eight cans of opium in Saigon, brought them on board the steamship Shun Chang, and had them in his possession during the trip from Saigon to Cebu. When the steamer anchored in the port of Cebu on April 25, 1917, the authorities on making a search found the eight cans of opium above mentioned hidden in the ashes below the boiler of the steamer's engine. The defendant confessed that he was the owner of this opium, and that he had purchased it in Saigon. He did not confess, however, as to his purpose in buying the opium. He did not say that it was his intention to import the prohibited drug into the Philippine Islands. No other evidence direct or indirect, to show that the intention of the accused was to import illegally this opium into the Philippine Islands, was introduced.

Has the crime of illegal importation of opium into the Philippine Islands been proven?

Two decisions of this Court are cited in the judgment of the trial court, but with the intimation that there exists inconsistency between the doctrines laid down in the two cases. However, neither decision is directly a precedent on the facts before us.

In the case of *United States vs. Look Chaw* ([1910], 18 Phil., 573), in the opinion handed down by the Chief Justice, it is found—

"That, although the mere possession of a thing of prohibited use in these Islands, aboard a foreign vessel in transit, in any of their ports, does not, as a general rule, constitute a crime triable by the courts of this country, on account of such vessel being considered as an extension of its own nationality, the same rule does not apply when the article, whose use is prohibited within the Philippine Islands, in the present case a can of opium, is landed from the vessel upon Philippine soil, thus committing an open violation of the laws of the land, with respect to which, as it is a violation of the penal law in force at the place of the commission of the crime, only the court established in the said place itself has competent jurisdiction, in the absence of an agreement under an international treaty."

A marked difference between the facts in the *Look Chaw* case and the facts in the present instance is readily observable. In the *Look Chaw* case, the charge was the illegal possession and sale of opium—in the present case the charge is illegal importation of opium; in the *Look Chaw* case the foreign vessel was in transit—in the present

case the foreign vessel was not in transit; in the *Look Chaw* case the opium was landed from the vessel upon Philippine soil—in the present case the opium was not landed by the defendant. In the case of *United States vs. Jose* ([1916], 34 Phil., 840), the main point, and the one on which resolution turned, was that in a prosecution based on the illegal importation of opium or other prohibited drug, the Government must prove, or offer evidence sufficient to raise a presumption, that the vessel from which the drug is discharged came into Philippine waters from a foreign country with the drug on board. In the *Jose* case, the defendants were acquitted because it was not proved that the opium was imported from a foreign country; in the present case there is no question but what the opium came from Saigon to Cebu. However, in the opinion in the *Jose* case, we find the following which may be obiter dicta, but which at least is interesting as showing the view of the writer of the opinion:

"The importation was complete, to say the least, when the ship carrying it anchored in Subic Bay. It was not necessary that the opium be discharged or that it be taken from the ship. It was sufficient that the opium was brought into the waters of the Philippine Islands on a boat destined for a Philippine port and which subsequently anchored in a port of the Philippine Islands with intent to discharge its cargo."

Resolving whatever doubt may exist as to the authority of the views just quoted, we return to an examination of the applicable provisions of the law. It is to be noted that section 4 of Act No. 2381 begins, "Any person who shall unlawfully import or bring any prohibited drug into the Philippine Islands." "Import" and "bring" are synonymous terms. The Federal Courts of the United States have held that the mere act of going into a port, without breaking bulk, is *prima facie* evidence of importation. (*The Mary* [U. S.], 16 Fed. Cas., 932, 933.) And again, the importation is not the making entry of goods at the custom house, but merely the bringing them into port; and the importation is complete before entry of the Custom House. (*U. S. vs. Lyman* [U. S.], 26 Fed. Cas., 1024, 1028; *Perots vs. U. S.*, 19 Fed. Cas., 258.) As applied to the Opium Law, we expressly hold that any person unlawfully imports or brings any prohibited drug into the Philippine Islands, when the prohibited drug is found under this person's control on a vessel which has come direct from a foreign country and is within the jurisdictional limits of the Philippine Islands. In such case, a person is guilty of illegal importation of the drug unless contrary circumstances exist or the defense proves otherwise. Applied to the facts herein, it would be absurd to think that the accused was merely carrying opium back and forth between Saigon and Cebu for the mere pleasure of so doing. It would likewise be impossible to conceive that the accused needed so large an amount of opium for his personal use. No better explanation being possible, the logical deduction is that the defendant intended this opium to be brought into the Philippine Islands. We accordingly find that there was illegal importation of opium from a foreign country into the Philippine Islands. To anticipate any possible misunderstanding, let it be said that these statements do not relate to foreign vessels in transit, a situation not present.

The defendant and appellant, having been proved guilty beyond a reasonable doubt as charged and the sentence of the trial court being within the limits provided by law, it results that the judgment must be affirmed with the costs of this instance against the appellant. So ordered.

Arellano, C. J., Johnson, Carson, Araullo, and Street, JJ., concur.

Judgment affirmed.

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